



Speech-Language Pathology and Audiology Board

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**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
Cal Expo Vagabond Executive Inn
2030 Arden Way
"Governor's Room"
Sacramento, CA 95825
January 23, 2004
MINUTES**

Members Present

Alison Grimes, AuD, Chairperson
Sherry Washington, M.A.
Rebecca Binge, M.A.
James Till, Ph.D.
Marcia Raggio, Ph.D.
Bruce Gerratt, Ph.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Pinson, Staff Analyst
George Ritter, Legal Counsel

Members Absent

Vivian Shannon, M.A.
Paul Donald, M.D.

Guests Present

Robert Powell, California Speech-Language Hearing Association
Cydney Fox, Vertigo Diagnostics Incorporated
Gail Ternes, California Academy of Audiology
Patricia Rae Evans, California Physical Therapy Association
Jan Speirs, Scripps Memorial Hospital, California Speech-Language Hearing Association
Barry Brokaw, California Academy of Audiology, Sacramento Advocates, Inc.

I. Call to Order

Chairperson Grimes called the meeting to order at 9:03 a.m.

II. Introductions

Those present introduced themselves.

III. Election of Officers

Ms. Del Mugnaio thanked Ms. Grimes for her hard work in serving as Board Chairperson for the past three and one-half years.

Ms. Del Mugnaio called for nominations to the positions of Board Chairperson and Vice Chairperson. Ms. Grimes nominated Ms. Raggio to serve as Chairperson. Ms. Raggio stated that she would gladly accept the nomination. Mr. Till nominated Ms. Washington to continue serving as Vice-Chairperson.

M/S/C: Grimes/Till

The Board voted to accept the nomination of Ms. Raggio to serve as Board Chairperson.

M/S/C: Till/Grimes

The Board voted to accept the nomination of Ms. Washington to continue to serve as Vice-Chairperson.

IV. Approval of meeting minutes for October 23-24, 2003 - Committee Meetings and Full Board Meeting

The Board discussed minor grammatical edits to the minutes.

M/S/C: Till/Bingea

The Board approved the October 23-24, 2003 Committee Meeting and Full Board Meeting minutes as amended.

V. Chairperson's Report (Alison Grimes) Report on the American Academy of Audiology Consensus Conference: Issues & Concerns Related to 4th Year AuD Students

Ms. Grimes stated that she has become aware of two important consumer protection issues. There have been two new petitions made to the Federal Food and Drug Administration and the comment period currently open for each. The first petition would revoke the requirement for a medical evaluation or waiver for the purchase of a hearing aid for adults. It proposes new language advising a purchaser over the age of 18 that hearing aids will not restore normal hearing and that some hearing loss is caused by

conditions that can be medically corrected. Information would be provided regarding the eight warning signs that should encourage a person to see a physician. The proposed language also reaffirms that children should see both a physician and an audiologist.

The second petition creates a new over-the-counter hearing aid classification granting over-the-counter sales to a “one size fits most” hearing aid type. Some of the arguments put forth include that a person can purchase “cheater eyeglasses” without an ophthalmologist examination, the high cost prohibits many from obtaining hearing aids, 95% of adult hearing loss is not medically treatable, and people can purchase over-the-counter medications which, in theory, can be more hazardous to their health than over-the-counter hearing aids. The author of this proposed legislation argues that there is currently inferior merchandise available to the buyer in a free market economy and that most purchasers can distinguish between low and high quality items. The author also states that the current Federal regulation restricts access.

Ms. Grimes stated that the “The 4th Year AuD Student Training Experience: Issues and Concerns Consensus Conference” was convened by the American Academy of Audiology (AAA) on January 10-11, 2004. She stated that the consensus statement is currently being drafted by the Academy and upon completion, the document will be made available to the Board for review.

Ms. Grimes stated that the conference was sponsored by the AAA Foundation and the Veterans Administration. The primary focus of the conference was to discuss whether the 4th Year AuD student should be issued a provisional license and be paid as an employee of an organization or should the 4th year of the AuD program be viewed as an externship/ 4th year clinical experience that must be completed prior to receiving a degree or being issued a license.

Ms. Grimes stated that the Academy of Dispensing Audiology supports the position taken by other doctorate healthcare professions, which is that students are not expected to be paid by salary, licensing is inappropriate for a student, learning experience in the 4th year should be appropriately supervised and, at most, AuD students may receive traditional financial aid in terms of a grant or stipend.

Ms. Grimes explained that several presenters at the conference noted that there may be a temptation to “maximize income by inappropriate tasking of students.”

Ms. Grimes stated that the Audiology Foundation of America also supports withholding licensure until the student has graduated. The Foundation stated “State licensure boards should be very concerned about placing this burden of responsibility for providing patient care upon individuals who have not yet completed their professional training.”

Ms. Grimes further stated that the Rush University Advisory Board commented that “salary (for the 4th year) is clearly inappropriate.”

Ms. Grimes explained that, although she did not attend the conference, all the information she has obtained indicates that the consensus statement will oppose licensing the 4th year AuD students, and oppose paid salary and benefits.

Ms. Del Mugnaio explained that a 4th year AuD student can apply for an RPE temporary license because at the time an AuD Student reaches their 4th year, they presumably have completed the education and clinical requirements to qualify for licensure and are eligible to apply for the RPE temporary license to complete the professional experience. Ms. Del Mugnaio pointed out that paying a student salary and benefits becomes an ethical issue for consideration by the university and the potential employer.

Ms. Grimes stated that she is concerned about students who begin to work and decide not to return to school to finish their degree, they will be non-degreed licensees.

Mr. Ritter stated that this issue is more of a labor-related issue and may not have a direct impact on consumer protection.

VI. Committee Reports

A. Continuing Professional Development Practice Committee (Gerratt)

Mr. Gerratt stated that the Continuing Professional Development Practice Committee met to review a number of appeals submitted by Continuing Professional Development providers and by licensees.

Mr. Gerratt explained that Ms. Del Mugnaio provided additional documentation to the Committee regarding a course previously considered, "How Does Your Engine Run?" Mr. Gerratt stated that the Committee reviewed the additional documentation and determined that the course was not appropriate for course credit and, therefore, the course was denied.

Mr. Gerratt stated that the Committee also reviewed several appeals submitted by licensees regarding course credit. He explained that the Committee reviewed an appeal regarding a course entitled "The Explosive Child." The course was denied as it was determined that it was not directly relevant to the practice of speech-language pathology. He stated that the Committee also reviewed a course entitled "Depression Versus Dementia: A Guide for Clinicians," and concluded that the course did not appear to provide information on how the diagnosis of depression or dementia influences the treatment plan of speech-language pathologists or how it alters the manner in which speech-language pathologists manage a patient suffering from either of the diseases. Consequently, this course was also denied. Mr. Gerratt stated that the Committee also reviewed an appeal of a course entitled "Abuse and Neglect of the Elderly." He stated that this course was approved as it addressed legal issues which are pertinent to the professional conduct of licensed speech-language pathologists and audiologists. The course qualifies as an approved course offering as it complies with the regulations defining approved indirect client care topics.

Mr. Gerratt stated that the Committee did not discuss the Committee's previous decision denying the course entitled "Animal Assisted Therapy," because the decision to deny the course, as determined at the October 23, 2003, Committee meeting, is a final decision and is not eligible for further consideration by the Committee.

Mr. Gerratt explained that the Committee reviewed a Continuing Professional Development Provider application submitted by the California Association for Behavior Analysis. Mr. Gerratt stated that the course content, as submitted, was vague and did not directly address speech-language pathology treatments or therapies. The application was tentatively denied. However, Mr. Gerratt explained that the Committee decided to make a recommendation to the Board that a letter be drafted to provide the California Association for Behavior Analysis informing the group of various subject areas that may be acceptable as CPD for licensed speech-language pathologists and audiologists.

Ms. Del Mugnaio stated that she provided information regarding volunteer subject matter experts who may wish to serve the Board in reviewing continuing professional development courses in the future. She explained that the Board's website includes a link to additional information that may be accessed by anyone interested in serving the Board in that capacity.

B. Audiology Practice Committee (Bingea)

Ms. Bingea explained that the Audiology Practice Committee held a discussion regarding vestibular function testing being conducted by unlicensed personnel. This topic arose out of concerns brought to the Board by National Heritage Insurance Company (NHIC). NHIC is a Medicare contractor for California. NHIC reported a significant increase in billing for vestibular function studies and expressed concern that unqualified personnel were conducting the testing.

Ms. Del Mugnaio stated that conducting vestibular function studies is within the scope of practice of audiology and may be permissible under the Medical Practices Act. As such, the only individuals who are authorized by law to conduct the tests are physicians or those under the supervision of a physician, audiologists and audiology aides who are under 100% direct supervision of an audiologist.

Representatives from Vertigo Diagnostic, Inc. (VDI) presented information regarding their mobile diagnostics company that provides services in physicians' offices and currently utilizes technicians and audiologists to perform vestibular function studies. VDI expressed interest in utilizing non-audiologist technicians to perform the testing in order to increase service accessibility. VDI reported that, at present, there are not enough audiologists to serve the population in need of the testing. Ms. Bingea stated that Ms. Del Mugnaio offered to provide the VDI representatives with information on the legislative initiative process wherein specialized technicians could be defined.

Ms. Bingea stated that the Committee has been monitoring two pieces of legislation over the past year. The first, SB 174, would require healthcare plans and insurers to provide up to \$1000 coverage for hearing aids to enrollees under the age of 18. Ms. Del Mugnaio explained that the bill was recently amended and the language specific to hearing aids has been stricken. As currently written, the bill no longer has any significance to this Board.

Ms. Bingea explained that the second piece of legislation, SB 648, would permit the seller of hearing assistive devices, including hearing aids, to charge a nominal fee for any adjustment of the device during the warranty period. This bill is a two-year bill and will die at the conclusion of this legislative cycle if no action is taken.

Ms. Bingea stated that the Committee briefly discussed sunset review topics relevant to the practice of audiology. The Committee decided to defer the discussion until the full Board meeting discussion as agendized under item XI.

M/S/C: Washington/Raggio

The Board voted to accept the report and recommendations of the Audiology Practice Committee.

C. Speech-Language Pathology Practice Committee (Till)

Mr. Till stated that the Speech-Language Pathology Practice Committee met to discuss the status of the Occupational Therapy Board's regulations regarding assessment and treatment of dysphagia as an advanced practice for occupational therapists. Mr. Till stated that Ms. Del Mugnaio provided a summary of the status of the regulations and referred the Committee to the Board of Occupational Therapy's website for statements and additional information.

Mr. Till explained that the regulations of the Occupational Therapy Board are currently on hold because of the November 17, 2003 Executive Order issued by Governor Schwarzenegger. Therefore, occupational therapists cannot perform, at present, advance practices in the area of swallowing. In addition, occupational therapists cannot perform such practice under the supervision of speech-language pathologists. In a related comment, Ms. Washington pointed out that the American Speech-Language Hearing Association has taken the position that it is unethical for speech-language pathologists to train occupational therapists to perform swallowing assessment or treatment. This is in conflict with the regulations that, if passed, would allow such training by speech-language pathologists. Ms. Del Mugnaio stated that if a speech-language pathologist were to agree to provide supervision to an occupational therapist, the speech-language pathologist would be assuming some professional liability for an individual in a different profession. She further stated that the supervision role is not mandatory and that each individual speech-language pathologist should use professional judgement before agreeing to enter into this type of relationship.

Mr. Till explained that the Committee also addressed the issue of the use of electrical muscle stimulation primarily in the treatment of dysphagia. Three main issues were identified during the discussion. The issues were related to safety, efficacy, and scope of practice. Mr. Till explained that Mr. Donald had researched the issues of safety and efficacy with colleagues and through reviewing literature on the internet. He felt that, in some cases, there was not a significant safety issue because of the low amperage of the devices. He stated that there is one device, Vital Stim, that has been approved by the Federal Food and Drug Administration (FDA) for safety with a very specific protocol to be

used in the treatment of swallowing. The Committee expressed concern that individuals may over-generalize the issue of safety and utilize other methods of electrical muscular stimulation. This could lead to practice that may endanger consumers.

Mr. Till stated that, with regard to efficacy, Mr. Donald as well as many others, pointed out that there is no strong replicated peer reviewed scientific evidence of efficacy regarding the device or this approach to the treatment of dysphagia.

Mr. Till stated that the Committee discussed the scope of practice issue and reviewed the Board's statutes and regulations related to scope of practice. It appears that, as the current scope of practice refers to use of instrumentation, it is narrowly defined to indicate endoscopes. However, it was pointed out that language stating methods and applications may include this process. The Committee requested further legal review regarding the issues of scope of practice.

Mr. Till explained that the Committee did not make a final determination regarding the use of electrical muscle stimulation in the treatment of dysphagia primarily because of ongoing concerns regarding safety and efficacy.

Ms. Del Mugnaio stated that there was a significant concern posed by the Physical Therapy Association regarding the training and education of speech-language pathologists to participate in any type of electrical stimulation.

Mr. Till stated that the Committee will further review this matter upon additional legal research.

M/S/C: Gerratt/Bingea

The Board voted to accept the report and recommendations of the Speech-Language Pathology Practice Committee.

VII. Executive Officer's Report (Annemarie Del Mugnaio)

A. Review of Governor's Executive Orders

Ms. Del Mugnaio stated that there will be a number of budget, travel and training restrictions because of new Executive Orders issued by Governor Schwarzenegger. These Orders and a follow-up budget letter restricts state agencies from all non-essential travel, which includes training and all contracting for good and services. The DCA was subsequently issued an exemption from the contracting restriction which allows boards to continue to hold board meetings. Ms. Del Mugnaio advised any Board members that would like additional information regarding the Executive Orders issued to contact her directly.

Ms. Del Mugnaio also explained that, pursuant to an Executive Order, all regulatory actions pending as of November 17, 2003, were placed on hold. This affects the adoption of the Board of Occupational Therapy's proposed advanced practice regulations.

However, the Executive Order does not prohibit the Board from pursuing any future regulatory actions.

B. Legislation of Interest to the Board

Ms. Del Mugnaio stated that AB 750 is currently pending. This is a bill that attempts to limit the definition of those professionals billing Medi-Cal for wheelchairs. Ms. Del Mugnaio stated that the problem with the language of this bill is that it does not specify rehabilitation equipment as that pertaining to methods of mobility. The California Speech-Language Hearing Association has put forth recommendations to modify the bill so that it speaks directly to mobility devices.

C. Budget Update

Ms. Del Mugnaio provided the Board with an updated projection of the Board's budget as this report marks the half-way point in the 2003-2004 fiscal year.

D. Board Member Ethics Training and Orientation

Ms. Del Mugnaio stated that because of the Governor's Executive Order, all training, including board member orientation training, has been restricted. Ms. Del Mugnaio explained that the department is in the process of requesting an exemption due to the legislative mandate that all board members complete a department sponsored orientation training within the first year of service. Since this Board does not have any new members, this situation is not a pressing matter for this Board.

VIII. Enforcement/Licensing Statistical Reports (Candace Raney/Lori Pinson)

Ms. Del Mugnaio explained that the current statistical reports for enforcement and licensing were included in the Board packets.

IX. Discussion on Proposed Amendments to California Code of Regulations Sections 1399.152 & 1399.156.4 Regarding Board-Approved Institutions & the Advertisement of Professional Degrees

Ms. Del Mugnaio explained that the language provided to the Board represents a working draft prepared by a subcommittee of the California Council of Academic Programs in Communicative Sciences and Disorders. The proposed language would redefine the Board's regulations, specifically Section 1399.152 of the California Code of Regulations regarding board-approved educational institutions.

The Board reviewed the language and expressed some very serious concerns regarding the minimal requirements outlined in the proposed language.

Ms. Lisa O'Connor also voiced some concerns regarding the language provided by the Council. She stated that she plans to address her concerns with the Council.

Ms. Grimes stated that she would like the Board to continue to work with the Council on the proposed amendment to the regulations but also recommended that the Board continue to move forward with addressing this issue.

M/S/C: Raggio/Washington

The Board voted to delegate this matter to Mr. Till and Ms. Raggio to share with the Council the Board's concerns regarding the proposed language and to, if necessary, notify the Board Executive Officer if an interim Board meeting is required to further address and discuss this issue.

X. Discuss Action Plan to Proceed with Legislative Proposal to Define Prohibited Business Arrangements within the "Speech-Language Pathologists and Audiologists Licensure Act"

Ms. Del Mugnaio explained that this issue was included in the draft sunset review report under new issues. She stated that the Department of Consumer Affairs is unable to carry this proposal on behalf of the Board because the Governor's Office has informed the DCA that they will not be submitting an omnibus bill this year.

Ms. Del Mugnaio proposed that the Board include the issue in its Sunset Review Report by posing the situation to the Legislature and requesting guidance from them on how to address the matter. Mr. Ritter agreed to work with the Executive Officer to prepare the language in this portion of the Sunset Review Report.

M/S/C: Raggio/Bingea

The Board voted to include this item in the Board's Sunset Review Report as opposed to attempting to pursue the matter through an independent legislative initiative.

XI. Discuss Draft Sunset Review Report and Related Issues

Ms. Del Mugnaio distributed a revised draft of the Sunset Review Report and explained that she and Ms. Raggio had made substantive changes to the report from the last revision. These changes involved reformatting the report to respond to the Joint Legislative Sunset Review Committee's (JLSRC) questionnaire. She explained that a large portion of the reference information and practice statistics have been stricken from the report and placed in an accompanying addendum. Ms. Del Mugnaio stated that the licensing and enforcement statistical information will be one of the last pieces of information to be included in the report.

The Board discussed the history and intent of the Sunset Review process as well as the history of the Board's merger discussions in 1997/1998 that involved merging the Speech-Language Pathology and Audiology Board and the then Hearing Aid Examining Committee.

The Board discussed the pending JLSRC's issues that were identified during the Board's 1997/98 review and the manner in which the issues should be presented in the 2004 report. The Board determined that the information regarding the elimination of dual licensure for audiologists and the issue of merging the Board with another related allied health board should be discussed independent of one another but that a reference to the related body of information could be included under each issue.

Mr. Powell stated that if the Hearing Aid Dispensers Bureau were merged with the Speech-Language Pathology and Audiology Board, the governance structure of the merged agency would be disproportionate to the subject number of licensees in that the speech-language pathologists would heavily out-number the audiologists and hearing aid dispensers.

Mr. Brokaw pointed out that if the hearing aid dispensers and the audiologists were under one agency, then the two groups would be able to deliberate long standing practice issues and establish defined practice boundaries.

The Board determined that the report should reflect that the Board is supportive of eliminating the requirement for audiologists to hold a separate license to dispense hearing aids. However, the Board is in favor of preserving its current structure and is not proposing a merger of the Board with the Hearing Aid Dispensers Bureau. It was noted that the Board is prepared to explain both the pros and cons of initiating a merged agency including fiscal implications.

The Board also addressed the current issues as contained in the draft report and decided to delete a few issues that have not developed into action items that require legislative intervention or immediate action by the Board.

XII. Meeting Calendar 2004

The Board discussed the meeting calendar for 2004 and established the following dates for upcoming board meetings: April 15 & 16, 2004 to be held in San Francisco, July 8 & 9, 2004 to be held in Los Angeles and September 23 & 24, 2004 to be held in Sacramento.

XIII. Public Comment on Items Not on the Agenda

Ms. Cydney Fox addressed the Board and expressed frustration and confusion regarding the position and function of the Board with regard to the issue of support personnel performing ENG studies. She asked the Board how they perceived their role and whether the Board typically partners with the various organizations in developing legislation or if the Board places the entire focus on the professional organizations and then takes a position on whatever is proposed.

Ms. Grimes stated that, as an audiologist, until the discussion at the Audiology Practice Committee meeting, she was unaware of a shortage of audiologist to perform ENGs. She stated that this is not an issue that has been brought before the Board prior to notification by National Heritage Insurance Company and the discussion at the Audiology Practice

Committee meeting. She stated that she disagrees with some of the fundamental assertions made by VDI representatives at the Committee meeting. She stated that the Board has not been presented with information or documentation that demonstrates that this is a significant consumer protection issue at this point. Ms. Grimes stated that if the Board is provided with information that this is a pervasive or ongoing issue of consumer protection, the Board will take a proactive role to address the matter.

Ms. Del Mugnaio stated that this issue stems from an abuse in billing for the vestibular function study. She explained that it may involve extending the scope of practice of audiology to support personnel who have acquired specific training and, to that extent, is a matter that should be addressed by the audiology professional associations.

Ms. Washington reiterated that the role of the Board is to address the consumer protection and safety interest of any matter brought before the Board. She stated that the role of the Board in the legislative arena is to provide input on legislative proposals that affect scope of practice and determine if support or some other form of action is necessary.

XIV. Announcements

Next Board Meeting is April 15-16, 2004 San Francisco

The next Board meeting will be held in San Francisco on April 15 & 16, 2004.

XV. Adjournment

There being no additional items for discussion, Chairperson Grimes adjourned the meeting at 3:00 p.m.

Annemarie Del Mugnaio, Executive Officer